

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 * * * * *

4 IN THE MATTER OF TRANSFER)
5 OF TERRITORY OF HIGH SCHOOL) DECISION AND ORDER
6 DISTRICT NO. 29,)
SHERIDAN COUNTY, MONTANA) OSPI 192-90

7 * * * * *

8 STATEMENT OF THE CASE

9 Gordon and Jeanette French (Respondents), Plentywood,
10 Montana, sought transfer of territory from Outlook High School
11 District No. 29, Sheridan County, to Plentywood High School
12 District No. 20, Sheridan County. Pursuant to state statute, a
13 hearing was held before the Sheridan County Superintendent of
14 Schools who granted the transfer on December 14, 1990.

15 Ken Hagan, individually, and as chairman of the Outlook
16 Public Schools (Appellants), appealed the order of the County
17 Superintendent to this Superintendent pursuant to Section 20-6-
18 320(4), MCA.

19 The issues on appeal are:

20 1. Whether the Respondents were qualified under state
21 statutes to file a petition for transfer of territory.

22 2. Whether the petition, as filed, was a valid petition as
23 required by Section 20-6-320, MCA, therefore invoking the
24 jurisdiction of the County Superintendent of Schools.

25 3. Whether all statutory requirements were met.

1 further clarified to mean that a finding is clearly erroneous if
2 a "review of the record leaves the court with the definite and
3 firm conviction that a mistake has been committed." Wage Appeal
4 v. Board of Personnel Appeals, 208 Mont. 33, 676 P.2d 194, at 198
5 (1984). A conclusion of law is controlling if it is neither
6 arbitrary nor capricious. City of Billings, supra, 200 Mont. at
7 430.

8 Section 20-6-320, MCA, is a lengthy and somewhat confusing
9 statute enumerating specific rights and mandating specific
10 procedural steps that must be taken. It may be noted that the
11 52nd Legislature, in S.B. 395, has extensively amended this
12 statute principally to clarify procedure. Notwithstanding the
13 need for clarification in language, the statute as applicable in
14 this matter is without discretionary language.

15 Content of the Petition.

16 Section 20-6-320, MCA, states the statutory requirements for
17 petitions for transfers of territory from one high school
18 district to another. It states:

19 (2) The petition must be addressed to the county
20 superintendent and shall:

21 (a) describe the territory that is requested to
22 be transferred and to what district it is to be
23 transferred;

24 (b) state the reasons why such transfer is
25 requested; and

(c) state the number of high-school-age children
residing in such territory. [emphasis added]

A review of the record established with the County
Superintendent clearly shows that the petition was incomplete.

1 The hearing officer in fact found that the statutory requirements
2 were not met. Finding of Fact No. 4.

3 Certification of the Petition.

4 Section 20-6-320, MCA, mandates that each petition be
5 certified by a majority of the county's board of commissioners.

6 It states in part:

7 (3) On receipt of a valid petition for a
territory transfer, the county superintendent shall:

8 (a) present the petition to the board of county
9 commissioners for certification that the criteria set
10 forth in subsection (1) have been met.

11 (b) file the petition as certified by the board
12 of county commissioners; [emphasis added]

13 There is no evidence in the record that the required
14 certification was sought or completed.

15 Qualifications to Petition.

16 Section 20-6-320, MCA, states the requirements and
17 procedures for transferring territory from one high school
18 district to another and states who may file a petition. It
19 provides:

20 **Transfer of territory from one high school**
21 **district to another. (1) A majority of electors of**
22 **any high school district who are qualified to vote**
23 **under the provisions of 20-20-301 and who reside in**
24 **territory that is part of a high school district may**
25 **petition the county superintendent to transfer such**
territory to another high school district if:
. . . . [emphasis added]

Section 20-20-301, MCA, specifies the qualifications of an
elector for school districts. It states in part:

1 An individual is entitled to vote at school
2 elections if he has the qualifications set forth in 13-
3 1-111 and he is a resident of the school district . .
4 . . [emphasis added]

5 Section 13-1-111, MCA, states in part:

6 **Qualifications of voter.** (1) No person may be
7 entitled to vote at elections unless he has the following
8 qualifications:

9 (a) He must be registered as required by law.
10 [emphasis added]

11 Section 13-1-112, MCA, states in part:

12 **Rules for determining residence.** For registration
13 or voting, the residence of any individual shall be
14 determined by the following rules as far as they are
15 applicable:

16 (1) The residence of an individual is where his
17 habitation is fixed and to which, whenever he is
18 absent, he has the intention of returning.

19
20 (4) An individual does not lose his residence if
21 he goes into another state or district of this state
22 for temporary purposes with the intention of returning
23 unless he exercises the election franchise in the other
24 state or district.

25
 (8) A change of residence can be made only by the
act of removal joined with intent to remain in another
place. [emphasis added]

 Section 13-1-113, MCA, states:

Only one residence. There can only be one
residence. [emphasis added]

 A letter from Respondents to the Plentywood Board, states
that the Respondents are residents of Plentywood and registered
voters in School District No. 20 -- not School District No. 29.
High School Exhibit No. 3. By their own admission, Respondents
do not meet the statutory requirements and have no standing to
file a petition.

1 Without a complete and valid petition filed by qualified
2 electors, the County Superintendent was without jurisdiction to
3 hear the matter of transfer of territory.

4 Advisable and in the Best Interests.

5 The County Superintendent found that "it is in the best
6 interests of the petitioners to transfer the territory, however,
7 not in the best interests of those in the remaining territory."
8 Conclusion of Law No. 3.

9 The County Superintendent is required to hear residents or
10 taxpayers of either affected district, and grant the petitioned
11 request if found advisable and in the best interests of the
12 residents of the territory. Section 20-6-320(4), MCA.

13 The Montana Supreme Court has interpreted the language in
14 Section 20-6-213(4), MCA, pertaining to the transfer of territory
15 in an elementary district. Gunderson v. Board of County
16 Commissioners, 183 Mont. 317, 599 P.2d 359 (1979). The language
17 of that statute is substantively the same as that in Section 20-
18 6-320(4), MCA. The court in Gunderson found that the transfer
19 petition could be granted only if the requested transfer is
20 deemed both advisable and in the best interests of the residents
21 of the territory in question. It further held that advisability
22 pertained to the remaining territory and that having determined
23 that a transfer was inadvisable for the remaining territory, the
24 petition must be denied. The court said: "That there may have
25 been persuasive and competent evidence that the transfer was in

1 the best interests of the residents of the territory to be
2 transferred is, as the law is written, superfluous." Gunderson,
3 183 Mont. at 321.

4 DATED this 20 day of May, 1991.

5
6 Nancy Keenan
7 NANCY KEENAN

8 CERTIFICATE OF SERVICE

9 THIS IS TO CERTIFY that on this 21st day of May, 1991, a
10 true and exact copy of the foregoing Decision and Order was
11 mailed, postage prepaid, to the following:

12 Ken Hagan, Board Chairman
13 Outlook Public Schools
Box 296
Outlook, MT 59252

Douglas B. Olson
Attorney at Law
P.O. Box 1695
Helena, MT 59624

14 Gordon & Jeanette French
15 229 S. Adams
Plentywood, MT 59254

Robert E. Smith
Sheridan County Superintendent
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18 Scott Campbell
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